

Before the
Federal Communications Commission
Washington, D.C. 20554

In the Matter of)
)
Hemisphere Media Group, Inc.) MB Docket No. 18-134
)
Petition for Declaratory Ruling)

DECLARATORY RULING

Adopted: September 18, 2018

Released: September 18, 2018

By the Chief, Media Bureau:

1. Hemisphere Media Group, Inc. (HMTV) filed a Remedial Petition for Declaratory Ruling (Remedial Petition)¹ requesting that the Commission modify its previous declaratory ruling released January 18, 2017² and specifically approve³ permitting Banco Santander (México, S.A.), a Mexican Corporation (Banco Santander (México)) and affiliated entities, to hold up to 49.99% of the voting interests and up to 49.99% of the equity of HMTV.⁴ The petition is unopposed. Upon consideration of the record, we grant the Remedial Petition as set forth below.

2. *Previous Declaratory Ruling.* In the *Initial Declaratory Ruling*, the Media Bureau, acting on delegated authority, found that the public interest would not be served by refusing to grant HMTV’s petition for a declaratory ruling to permit foreign ownership above the statutory cap of 25 percent in Section 310(b)(4)⁵ and up to 49.99 percent voting interests and up to 49.99 of the company’s equity.⁶ The *Initial Declaratory Ruling* also specifically approved permitting Cinéma Aerpuerto, its parent entities, and certain descendants of José Joaquín Vargas Gómez, who are members of a trust committee (Trust Committee) that exercises ultimate control over Cinéma Aerpuerto to hold up to 49.99 percent voting interests and up to 49.99 of the company’s equity.⁷

¹ See 47 CFR § 1.5004(f)(3).

² *Hemisphere Media Group, Inc.*, Declaratory Ruling, 32 FCC Rcd 718 (2017) (“*Initial Declaratory Ruling*”).

³ 47 CFR § 1.5001(i).

⁴ Banco Santander is to act as trustee under a trust that ultimately holds a controlling interest in Cinéma Aerpuerto, S.A. de C.V. (Cinéma Aerpuerto), a Mexican corporation that the Commission previously specifically approved to hold the same 49.99% interests in HMTV. Remedial Petition at 1.

⁵ Section 310(b)(4) of the Communications Act states:

No broadcast or common carrier or aeronautical en route or aeronautical fixed radio station license shall be granted to or held by . . . any corporation directly or indirectly controlled by any other corporation of which more than one-fourth of the capital stock is owned of record or voted by aliens, their representatives, or by a foreign government or representative thereof, or by any corporation organized under the laws of a foreign country, if the Commission finds that the public interest will be served by the refusal or revocation of such license.

47 U.S.C. § 310(b)(4).

⁶ *Initial Declaratory Ruling*, 32 FCC Rcd. at 725.

⁷ *Id.*

3. At the time of the *Initial Declaratory Ruling*, the Trust Committee exercised its control over Cinéma Aeropuerto through HSBC 61549, a trust organized under the laws of Mexico for the descendants of José Joaquín Vargas Gómez.⁸ The sole trustee of HSBC 61549 was HSBC México, S.A. (HSBC México), a Mexican Corporation, an indirect, wholly-owned subsidiary of HSBC Holdings, plc, which is organized under the laws of the United Kingdom.⁹ HSBC México voted the shares of Grupo MVS, S.A. de C.V. (the ultimate corporate parent of Cinéma Aeropuerto) at the direction of the Trust Committee.¹⁰

4. On March 23, 2018, Cinéma Aeropuerto amended its Schedule 13D on file with the U.S. Securities and Exchange Commission with respect to its investment in HMTV to report that HSBC 61549 had been replaced with Santander Trust Agreement Number 2003914, Banco Santander (México), as trustee.¹¹ The Remedial Petition states that HMTV has confirmed with Cinéma Aeropuerto and its counsel that no other changes have taken place to the trust arrangement and that the new trust continues to vote the shares of Grupo MVS at the direction of the Trust Committee, whose membership is unchanged.¹²

5. HMTV states that Banco Santander (México) is publicly traded and files annual reports with the SEC on Form 20-F.¹³ HMTV further states that Banco Santander (México)'s March 27, 2018 Form 20-F reports that its controlling shareholder is Banco Santander, S.A., a Spanish bank, through its 100% ownership of Grupo Financiero Santander México, S.A. de C.V., which in turn holds 74.96% of the stock of Banco Santander (México). Banco Santander, S.A. is also public traded and files annual reports with the SEC.¹⁴ In its most recent annual report, the bank states that no stakeholder has over 3% voting rights or capital interests in it.¹⁵

6. HMTV contends that grant of the Remedial Petition is in the public interest because the specific approval it is seeking does not materially change the *Initial Declaratory Ruling*.¹⁶ It states that the trustee performs only administrative duties, voting the shares in Grupo MVS, which controls Cinéma Aeropuerto, the direct foreign investor in HMTV, solely at the direction of the Trust Committee, whose members have already been specifically approved.¹⁷ Only the trustee that performs the administrative duties has changed.¹⁸

7. *HMTV's Request for Declaratory Ruling*. HMTV seeks specific approval for Banco Santander (México) and Banco Santander, S.A. to hold up to 49.99% voting and equity interest in HMTV indirectly through Cinéma Aeropuerto.¹⁹ Here, HMTV explicitly states that it is only seeking a

⁸ *Id.* at 719.

⁹ *Id.*

¹⁰ *Id.* The *Initial Declaratory Ruling* identified the immediate parent of Cinéma Aeropuerto as Grupo Frecuencia Modulada Televisión, S.A. de C.V., but the name of the company was changed to Utrera S.A. de C.V. Remedial Petition at 7. Also, HMTV clarified in its Remedial Petition that the trust holds a 98.06% interest in Grupo MVS, not the 99.56% previously reported. *Id.*

¹¹ Remedial Petition at 2.

¹² *Id.* at 2-3.

¹³ *Id.*

¹⁴ *Id.*

¹⁵ *Id.* at 3.

¹⁶ Remedial Petition at 7.

¹⁷ *Id.*

¹⁸ *Id.*

¹⁹ Remedial Petition at 5.

modification of its existing declaratory ruling, not a completely new ruling and, under the terms of the *2016 Foreign Ownership Order*, it will continue to be subject to the general and specific conditions of the *Initial Declaratory Ruling* and the rules and policies in effect at the time it was issued.²⁰ HMTV does not seek any other changes in the *Initial Declaratory Ruling*. The Remedial Petition was put out for public comment on May 4, 2018 with comments due June 4, 2018. No parties have opposed the Petition or asked for conditions to be placed on the requested ruling.²¹

8. *Public Interest Analysis.* We find that HMTV's request is in the public interest. We previously found that grant of the *Initial Declaratory Ruling* was in the public interest because it was consistent with the Commission's goals as expressed in both the *2013 Broadcast Clarification Order* and the *2016 Foreign Ownership Order*, to encourage new sources of investment in the broadcast industry, including foreign investment.²² In that proceeding as in this one, the relevant Executive Branch agencies with expertise on issues related to national security, law enforcement, foreign policy, and trade policy did not file any objection to issuance of the declaratory ruling or request that we impose conditions on the grant after having had the opportunity to review the Remedial Petition.²³ The requested modification is minor, administrative, and does not result in a material change in control over Cinéma Aerpuerto, which is still exercised by the Trust Committee, upon which we have already passed. As noted above, no parties have opposed the Petition for declaratory ruling or asked for conditions to be placed on it.

9. *HMTV's Monitoring Procedures.* In its previous petition for declaratory ruling, HMTV stated that, among the methods it uses to monitor its foreign ownership compliance, it monitors reports filed with the SEC, including Schedules 13G and 13D.²⁴ HMTV's monitoring enabled it to successfully

²⁰ In the *2016 Foreign Ownership Order*, the Commission ruled that licensees that were subject to an existing declaratory ruling as of the effective date of the new rules would be required to continue to comply with any general and specific conditions of their rulings, including the rules and policies in effect at the time the ruling was issued. *2016 Foreign Ownership Order*, 32 FCC Rcd at 11317. We note that the *Initial Declaratory Ruling* was adopted after the release of the Commission's *2016 Foreign Ownership Order* but before the new rules that resulted from that order had gone into effect. See *Review of Foreign Ownership Policies for Broadcast, Common Carrier and Aeronautical Radio Licensees under Section 310(b)(4) of the Communications Act of 1934, as Amended*, Report and Order, GN Docket 15-236, 31 FCC Rcd 11272 (2016), pet. for recon. dismissed, 32 FCC Rcd 4780 (2017) (*2016 Foreign Ownership Order*); *Initial Declaratory Ruling*, 32 FCC Rcd at 721-24. Therefore, the *Initial Declaratory Ruling* was decided under the *2013 Broadcast Clarification Order* and was in effect as of the effective date of the *2016 Foreign Ownership Order*. See *Commission Policies and Procedures Under Section 310(b)(4) of the Communications Act, Foreign Investment in Broadcast Licensees*, MB Docket No. 13-50, Declaratory Ruling, 28 FCC Rcd 16244 (2013) (*2013 Broadcast Clarification Order*). Although licensees could request completely new declaratory rulings and become subject to the new foreign ownership rules, they were not required to do so. *2016 Foreign Ownership Order*, 32 FCC Rcd at 11317.

²¹ On August 20, 2018, the Commission received a letter stating that the reviewing Executive Branch agencies have no objection to the Remedial Petition. See *Letter from Bermel R. Paz, Foreign Investment Review Staff, National Security Division, U.S. Department of Justice, to Marlene Dortch, Secretary, Federal Communications Commission*, dated August 16, 2018, MB Docket 18-134.

²² *Initial Declaratory Ruling*, 32 FCC Rcd at 724.

²³ *Id.*

²⁴ *Initial Declaratory Ruling*, 32 FCC Rcd at 720. Other steps include participation in SEG-100. Also, HMTV's articles of incorporation contain multiple provisions to monitor foreign ownership and maintain compliance with 310(b)(4), including the ability to:

- restrict the ownership, or proposed ownership, of shares of its capital stock by any person if such ownership or proposed ownership is or could be in violation of the Communications Act;
- require a person owning or proposing to own stock to furnish such information as HMTV requests;
- refuse to permit the transfer of shares;
- suspend rights of stock ownership;
- redeem shares;

(continued...)

detect that it was required to seek specific approval for new entities in this situation. However, we remind investors in Commission licensees that it is important to promptly advise licensees of reportable events, such as occurred here, so that the licensee can proactively take all necessary steps to remain fully compliant with the Communications Act and our Rules.

10. Under these circumstances, pursuant to Section 310(b) of the Act, we find that the public interest would not be served by prohibiting foreign ownership of Hemisphere Media Group, Inc. in excess of the 25 percent benchmark in Section 310(b) of the Act as requested in the Remedial Petition.

11. *Specific Approval.* Therefore, we modify our decision in *Hemisphere Media Group, Inc.*, Declaratory Ruling, 32 FCC Rcd 718 (2017) to specifically approve permitting the following individuals and entities to hold up to 49.99 percent of the voting interests and 49.99 percent of the equity of Hemisphere Media Group, Inc:

- Santander Trust Agreement Number 2003914,
- Banco Santander (México), S.A.,
- Grupo Financiero Santander México, S.A. de C.V.,
- Banco Santander, S.A.

In reaching our decision, we have coordinated with the relevant Executive Branch agencies and given them the opportunity to review the petitioner's filings and the requests for specific approval in light of interests related to national security, law enforcement, foreign policy, trade policy, and other public policy goals. The Executive Branch agencies have filed a letter with the Commission stating that they have no objections. We also find no grounds to object to the requests for specific approvals and we conclude that they will facilitate the foreign investment sought by the petitioner. Today's specific approvals are in addition to those set out in our decision in *Hemisphere Media Group, Inc.*, Declaratory Ruling, 32 FCC Rcd 718 (2017). We make no other changes or modifications to our previous decision than those specifically stated in this decision.

12. This declaratory ruling is issued pursuant to section 310(b)(4) of the Communications Act of 1934, 47 U.S.C. § 310(b)(4), and sections 0.61 and 0.283 of the Commission's rules, 47 C.F.R. §§ 0.61 and 0.283.

13. Pursuant to section 1.103 of the Commission's rules, 47 C.F.R. § 1.103, the consent granted herein is effective upon release of this declaratory ruling.

FEDERAL COMMUNICATIONS COMMISSION

Michelle M. Carey
Chief, Media Bureau

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- require conversion of Class B shares to Class A; or
- exercise any and all appropriate remedies, at law or in equity, in any court of competent jurisdiction, with a view toward obtaining requested information or curing a violation.